

**The Imperial Inn and Hotel, Motel, Restaurant, Bar
and Club Employees Union, Local No. 17 of St.
Paul, Minneapolis and Vicinity, AFL-CIO.
Case 18-CA-7466**

May 24, 1982

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER**

Upon a charge filed on October 16, 1981, by Hotel, Motel, Restaurant, Bar and Club Employees Union, Local No. 17 of St. Paul, Minneapolis and Vicinity, AFL-CIO, herein called the Union, and duly served on The Imperial Inn, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint on December 18, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain in good faith with the Union by failing and refusing to execute a collective-bargaining agreement negotiated on its behalf by the St. Paul On-Sale Liquor Dealers Association. Respondent failed to file an answer to the complaint.

On March 1, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 4, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause, and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

261 NLRB No. 146

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the complaint and notice of hearing on December 18, 1981; it filed no answer by January 7, 1982; and, on that date, Respondent's counsel was informed by telephone by the General Counsel that the answer was past due. Thereafter, on January 11 and on February 1 and 17, 1982, the General Counsel attempted to contact Respondent's counsel by telephone, but was told that he was out of the office. On each occasion, the General Counsel left a message to the effect that the call concerned filing an answer in the instant case, and requested that Respondent's counsel return the call. Further, on February 2, 1982, the General Counsel sent a letter by ordinary mail to Respondent's counsel, advising him that unless an answer was filed and received by February 16, 1982, a Motion for Summary Judgment would be filed. As noted above, Respondent thereafter failed to file an answer, and has failed to file a response to the Notice To Show Cause.

Accordingly, in light of the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Minnesota corporation with an office and place of business in St. Paul, Minnesota. Respondent has been engaged in the operation of a public restaurant facility, selling food and beverages for on-premises consumption. In the 12-month period ending December 31, 1981, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and purchased and received products, goods, and materials at its St. Paul, Minnesota, location valued in excess of \$50,000 directly from points outside the State of Minnesota.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Hotel, Motel, Restaurant, Bar and Club Employees Union, Local No. 17 of St. Paul, Minneapolis and Vicinity, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Since 1971, and at all times material herein, the Union has been the exclusive collective-bargaining representative of employees in an appropriate unit consisting of all employees employed by the employer-members of the St. Paul On-Sale Liquor Dealers Association, excluding all other employees, guards and supervisors as defined in the Act. The St. Paul On-Sale Liquor Dealers Association, herein the Association, is an organization composed of employers in the St. Paul, Minnesota, area who are engaged in the sale of food and liquor for on-premises consumption. The Association exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with the Union. At all times material, Respondent has been a member of the Association and the Association has been authorized by Respondent to bargain collectively on its behalf with the Union in the unit set out above.

On or about October 7, 1980, the Association and the Union reached full agreement on a collective-bargaining contract, effective from October 1, 1980, to September 30, 1983, covering the employees in the unit described above. On or about October 9, 1980, the Union and the Association execut-

ed that agreement. Since November 1980 and continuing to date, including on or about August 25, 1981, the Union has requested, and is requesting, Respondent to execute the collective-bargaining agreement entered into on or about October 7, 1980. Commencing on or about April 18, 1981, and continuing to date, Respondent has refused to execute this collective-bargaining agreement entered into between the Association and the Union.

We find that, by the actions described above, Respondent has refused, and continues to refuse, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by failing and refusing to execute a collective-bargaining agreement negotiated on its behalf by the Association, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act. Further, by these actions, Respondent has interfered with its employees' exercise of their Section 7 rights and has thereby also violated Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. Such affirmative action shall include the requirement that Respondent execute forthwith the collective-bargaining agreement containing the terms and conditions agreed upon by the Association and the Union, and give retroactive effect from October 1, 1980, to said contract. We shall also order Respondent to make whole its employees for any losses they may have incurred as a result of Respondent's refusal to execute such agreement.¹ Backpay is to be computed

¹ This involves making whole the appropriate health and welfare and pension funds for any losses suffered by Respondent's unlawful refusal to execute the agreed-upon contract and to give it retroactive effect. Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a

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in a manner consistent with Board policy as stated in *Ogle Protection Service, Inc., and James L. Ogle, an Individual*, 183 NLRB 682 (1970), with interest thereon as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. The Imperial Inn is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hotel, Motel, Restaurant, Bar and Club Employees Union, Local No. 17 of St. Paul, Minneapolis and Vicinity, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by the employer-members of the St. Paul On-Sale Liquor Dealers Association, excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 1971, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to execute the contract agreed upon by the Union and the Association, which is Respondent's duly designated bargaining representative, Respondent has refused to bargain collectively with the Union as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and Respondent has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, by evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Company*, 240 NLRB 1213 (1979).

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Imperial Inn, St. Paul, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain collectively, upon request, with the Union with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the appropriate unit described below by refusing to execute the agreed-upon contract between the St. Paul On-Sale Liquor Dealers Association and the Union. The appropriate collective-bargaining unit is:

All employees employed by the employer-members of the St. Paul On-Sale Liquor Dealers Association, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Execute, honor, and give retroactive effect to the terms and conditions of the collective-bargaining agreement between the St. Paul On-Sale Liquor Dealers Association and the Union, and, upon request, otherwise bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit described above in accordance with the requirements of Sections 8(a)(5) and 8(d) of the Act.

(b) Make whole the unit employees for any losses they may have suffered by reason of Respondent's refusal to apply or observe the terms and provisions of the collective-bargaining agreement as set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its St. Paul, Minnesota, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT fail or refuse to bargain collectively, upon request, with the Union with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the appropriate unit described below by refusing to execute the agreed-upon contract between the

St. Paul On-Sale Liquor Dealers Association and Hotel, Motel, Restaurant, Bar and Club Employees Union, Local No. 17 of St. Paul, Minneapolis and Vicinity, AFL-CIO. The appropriate collective-bargaining unit is:

All employees employed by the employer-members of the St. Paul On-Sale Liquor Dealers Association, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL execute, honor, and give retroactive effect from October 1, 1980, to the terms and conditions of our collective-bargaining agreement between the Association and the Union; and WE WILL, upon request, otherwise bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of our employees in the appropriate unit described above in accordance with Sections 8(a)(5) and 8(d) of National Labor Relations Act.

WE WILL make whole our unit employees for any losses they may have suffered by reason of our refusal to apply, or observe, the terms and provisions of the collective-bargaining agreement, with interest.

THE IMPERIAL INN